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BOYCE & ISLEY, PLLC

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July 14, 2005

Mr. Eric D. Goulian Assistant U. S. Attorney 310 New Bern Avenue Suite 800 Raleigh, North Carolina 27601-1461

Dear Eric:

Enclosed please find our list of peanut farmers divided by state along with the Government's list. We have compared the two lists and totaled the number of farmers not found on the Government's list. Please review and verify the number of Plaintiffs not on the Government's list. The number of clients not found on the Government's list are set forth below; however some farmers have listed more than one farm.

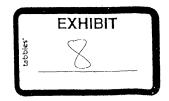
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- Flordia-4
- South Carolina-1
- Virginia-42
- Alabama-10
- Georgia-47

Sincerely yours,

BOYCE & ISLEY, PLLC

R. Daniel Boyce

RDB/mw Enclosures



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United States Attorney Eastern District of North Carolina

FAX COVER

DATE:

September 6, 2005

FROM:

TO:

Eric D. Goulian U.S. Attorney's Office 310 New Bern Ave., Suite 800 Raleigh, NC 27601 919-856-4356 FAX 856-4487

Brenna 833-7536

Total Pages (including cover sheet): 11

Peanut litigation:

Dan's 7-14-05 letter to me



4:36PM

NO.029 P.2

U.S. Department of Justice

United States Attorney
Eastern District of North Carolina

Terry Sanford Federal Building 310 New Bern Avenus Suite 800 Raleigh, North Carolina 27601-1461 Talaphona (919) 856-4530 Criminal FAX (919) 856-4487 Civil FAX (919) 856-4821 www.usdoj.gov/usao/nca

September 6, 2005

Fax and First-Class Mail

R. Daniel Boyce Boyce & Isley P.O. Box 1990 Raleigh, North Carolina 27602-1990

Re: Peanut Crop Insurance Litigation

Dear Dan:

I am writing in response to your letter of July 14, 2005, concerning farmers on your list who do not appear on RMA's list. Please understand that RMA's list includes only those peanut farmers who (a) have farms within one of the seven federal districts where lawsuits were filed, and (b) were paid an indemnity for a peanut loss in 2002. If someone appears on your list but not on RMA's list, it is because that person's farm is not located in one of the seven federal districts, or because that person did not receive an indemnity for a peanut loss in 2002, or both.

Feel free to give me a call if you have any questions.

Sincerely yours,

FRANK D. WHITNEY United States Attorney

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Eric D. Goulian Assistant United States Attorney



- 50, 3\$0, 2003 | 4:35PM

BOYCE & ISLEY PLLC

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Telephone: (919) 833-7373 Facsimile: (919) 833-7536

July 30, 2003

VIA FACSIMILE (202) 514-8625 AND UNITED STATES MAIL

Ms. Jane W. Vanneman
Senior Trial Counsel, Commercial Litigation Branch
Civil Division, Department of Justice
Atm: Classification Unit, 8th Floor
1100 L Street, N.W.
Washington, DC 20530

Re: Texas Peanut Farmers, et al. v. The United States

No. 03-445C (Judge Firestone)

Dear Jane:

We agree with Judge Firestone that it would be best for the Courts and all concerned to have these cases heard all in one place. Also, as Judge Firestone said, the Plaintiffs "need something in our hand" to assure our clients that this case will not be switched back and forth from jurisdiction to jurisdiction and thereby avoid an expeditious decision on the merits of the case and the ultimate issue of liability.

Judge Firestone's suggestion of a joint stipulation on jurisdiction seems to make sense. It may be that we can reach an agreement that any claims under the first filed Complaint are properly before that court and that court has jurisdiction over all the claims. We could further stipulate pursuant to 28 U.S.C. § 1407, assuming we have approval of the other Courts, to transfer all of the cases to one court for hearing on the same issues. Activity in the other cases could be stayed pending resolution of discovery and pretrial motions. The other U.S. Attorneys would likely agree, we believe. If that agreement can be reached, we could then take a dismissal in the Court of Federal Claims. We could have one trial court disposition, one jury trial, if needed, and one appeal to one Circuit Court.

Given both of our summer vacation plans (I also will be out of the office quite extensively during August), we would appreciate your efforts this week in advising us of the Government's position on these matters and advising whether a stipulation can be reached.

Thank you for your prompt attention to this matter, and I look forward to hearing from you.

EXHIBIT

Sincerely yours,

BOYCE & ISLEY, PLLC

Dan Boyce (07) R. Daniel Boyce

RDB/bl.

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CORRECTED BRIEF FOR DEFENDANT-APPELLEE

IN THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

04-5067

TEXAS PEANUT FARMERS, GEORGIA PEANUT FARMERS, ALABAMA PEANUT FARMERS, SOUTH CAROLINA PEANUT FARMERS, and FLORIDA PEANUT FARMERS.

Plaintiff-Appellants,

NOTHE UNITED STATES;

Defendant Appelles

APPEAL FROM THE TIMITED STATES COURT OF FEDERAL CLAIMS NO 83 445 Judge Nazcy B Firescore: 1)

> PETER D. KEISLER Assistant Attorney General

DAVIDYMO COHEN Difecto

JANE W VANNEMAN

emoratra meomsel Commercial Litigation Branch Department of Justice Attn: Classification Unit 8th Floor, 1100 L Street, N.W.

Washington, D.C. 20530 Tele: (202) 307-1011 Fax: (202) 514-8624

EXHIBIT July 21, 2004

Attorneys for Defendant-Appellee

C. The Plaintiffs Named In The Court of Federal Claims Are Also Named In Suits Pending In Five District Courts

As we explained to the court, all of the plaintiffs named in the Complaint filed in the court were also specifically named in five district court complaints that appellants' counsel filed in Texas, South Carolina, Florida, Alabama, and Georgia, after the filing in the Court of Federal Claims.

Al49-226. Because the individually-named appellants are now named in a district court (although not necessarily in the district in which the farm is located), the court properly denied the motion to transfer.

D. It Is Not Practical To Transfer Appellants' Cases
Because The Court Would Be Required To Transfer
To The Districts In Which The Farms Are Located

The court recognized that it would not be practical to transfer the cases to the various districts in which the farms are located. Counsel for the farmers provided no information upon which to base a transfer to any particular district court in the five states.

Appellants contend that, for each named plaintiff, the counties with respect to the farms at issue were identified in the complaint. However, there are dozens of counties

¹³ Because the district court suits in the five states were filed in May 2003, after the February 2003 filing in the Court of Federal Claims, 28 U.S.C. §1500 does not apply. <u>See generally Loveladies Harbor v. United States</u>, 27 F.3d 1545 'Fed. Cir. 1994). See Part F3, below.

potentially involved, and fourteen possible districts within the five states (four districts in Texas; three districts each in Florida, Georgia, and Alabama; and one district in South Carolina, for a total of fourteen possible districts).

Appellants failed to identify, for each of the named plaintiffs, by counties, the fourteen districts, within the five states, in which the farms were located. See 28 U.S.C. Chapter 5: §81 (Alabama), §89 (Florida), §90 (Georgia), §121 (South Carolina), §124 (Texas). A96-99.

Thus, it was not practical for the court to attempt to issue transfer orders to any one of the multiple district courts. See Part E.

E. It Is Too Late To Transfer The Case For The Named Plaintiffs Because Appellants Failed To Provide This Court With Information Sufficient To Transfer The Claims

Appellants failed to provide any information to the court as to the district in which the farms are located. Appellants fail to provide, on appeal, any information to this Court that might assist it in any possible transfer order. The burden that appellants sought to impose upon both courts — to match the dozens of named plaintiffs, with the counties in which the farms are located, with the appropriate district court, within one of five states — is too great to warrant any consideration of the transfer motion. In any event, appellants failed to file any motion to transfer in this court. Rule 27.

It would clearly be a burden for this Court, or for the

PLAINTIFF'S PROPOSED EFFICIENT PROCESS

- 1. Class Counsel filed Motion before JPML Panel that Court of Federal Claims case be identified as "potential tag along action" (Court of Federal Claims merely confirms status and requests ruling)
- 2. JPML issues "tag along action" transfer order of the Court of Federal Claims case (in its entirety) to EDNC pursuant to JPML Rule 7.4 and sends one file pursuant to JPML Rule 1.6
- 3. EDNC completes all coordinated/consolidated pretrial proceedings including determination of jurisdiction & venue issues of individual plaintiff cases and issues transfer orders of all plaintiff cases to the appropriate federal district courts pursuant to 28 USC 1631; 28 USC 1406; 28USC 1407 and 28 USC 1404.
- 4. 24 federal district courts receive identical transfer orders; enter final judgment and begin 24 identical class administrations unless Government agrees to consolidate as one class administration.

GOVERNMENT'S PROPOSAL AND RESULTING ADDITIONAL STEPS TO REACH SAME END RESULT

- 1. Court of Federal Claims transfers "some" cases to EDNC which requires determination of which cases go to EDNC and which cases may go elsewhere.
- 2. Court of Federal Claims requires "plaintiffs' counsel to identify those plaintiffs named in this action whose farms are not located in the specific judicial districts in the five states in which the cases were filed so that the Court of Federal Claims may transfer the cases for those named plaintiffs to the appropriate judicial districts in the district courts in the five states in which the farms are located."
- 3. Plaintiffs file Motion to Compel production of information including Governments' withheld information regarding the location of specific plaintiffs' farms to determine which districts are the appropriate federal districts for new lawsuits.
- 4. Government either provides or does not provide the information needed to determine the appropriate federal districts for each of Plaintiffs' claims.
- 5. Court of Federal Claims sorts out disputes as to which new federal district courts must be identified and sends as many as 14 separate transfer orders to 14 new separate federal district courts.
- 6. As many as 14 new federal cases are initiated in 14 new federal district courts
- 7. Plaintiffs file as many as 14 motions to transfer the cases in 14 new and different federal district courts requesting that the cases be designated "tag along actions" to be handled by JPML.

EXHIBIT

- 8. Plaintiffs identify 14 new "tag along actions" and request JPML to certify 14 new cases as "tag along actions."
- 9. JPML certifies each of the 14 new federal cases as "tag along" cases and transfers them to the EDNC pursuant to rule 7.4. This also requires the transfer of 14 new files pursuant to JPML Rule 1.6.
- 10. After waiting for all these cases to reach it for _?_ months, EDNC accepts and enters into system as many as 14 new tag along cases for pretrial determination. (meanwhile other cases either disposed of or waiting for the 14 new cases to reach EDNC).
- 11. EDNC completes all coordinated/consolidated pretrial proceedings including determination of jurisdiction & venue issues of individual plaintiff cases and issues transfer orders of all plaintiff cases to the appropriate federal district courts pursuant to 28 USC 1631; 28 USC 1406; 28USC 1407 and 28 USC 1404.
- 12. 24 federal district courts receive identical transfer orders; enter final judgment and begin 24 identical class administrations unless Government agrees to consolidate as one class administration.